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HOUSE BILL 9

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2003

INTRODUCED BY

Rory J. Ogle

AN ACT

**RELATING TO SEXUAL OFFENDERS; PROVIDING FOR THE INVOLUNTARY
CIVIL COMMITMENT OF SEXUAL PREDATORS; ENACTING THE SEXUAL
PREDATOR CIVIL COMMITMENT ACT; DECLARING AN EMERGENCY.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. SHORT TITLE. -- This act may be cited as the
"Sexual Predator Civil Commitment Act".**

**Section 2. LEGISLATIVE FINDINGS. -- The legislature finds
that:**

**A. there exists an extremely dangerous group of
sexually violent predators who have a mental abnormality or
personality disorder and who are likely to engage in repeat
acts of sexual violence if not treated for their mental
abnormality or personality disorder;**

B. because the existing civil commitment procedures

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1 are inadequate to address the special needs of sexually violent
2 predators and the risks they present to society, a separate
3 involuntary civil commitment process for the potentially long-
4 term care, treatment and control of sexually violent predators
5 is necessary; and

6 C. because of the nature of the mental
7 abnormalities or personality disorders from which sexually
8 violent predators suffer, and the dangers they present, it is
9 necessary to house involuntarily committed sexually violent
10 predators in an environment separate from persons otherwise
11 involuntarily committed.

12 Section 3. DEFINITIONS. -- As used in the Sexual Predator
13 Civil Commitment Act:

14 A. "agency with jurisdiction" means the agency that
15 releases upon lawful order or authority a person serving a
16 sentence or term of confinement and includes the corrections
17 department, the department of health and the children, youth
18 and families department;

19 B. "committed person" means a person who has been
20 found to be a sexually violent predator and committed to the
21 custody of the department, whether in a secure commitment
22 facility, a transitional release program or a conditional
23 release program;

24 C. "department" means the department of health;

25 D. "likely to engage in repeat acts of sexual

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1 violence" means that the person's propensity to commit sexually
2 violent offenses is of such a degree as to pose a menace to the
3 health and safety of others and that the person has serious
4 difficulty in controlling his behavior;

5 E. "mental abnormality" means a congenital or
6 acquired condition affecting the emotional or volitional
7 capacity that predisposes a person to commit sexually violent
8 offenses in a degree constituting the person a menace to the
9 health and safety of others;

10 F. "potential predator" means a person who is a
11 potential or actual subject of proceedings pursuant to the
12 Sexual Predator Civil Commitment Act;

13 G. "secretary" means the secretary of health;

14 H. "sexual motivation" means that one of the
15 purposes for which a defendant committed a crime was for the
16 purpose of the defendant's sexual gratification;

17 I. "sexually violent offense" means:

18 (1) criminal sexual penetration, as provided
19 in Section 30-9-11 NMSA 1978;

20 (2) sexual exploitation of children, as
21 provided in Section 30-6A-3 NMSA 1978;

22 (3) sexual exploitation of children by
23 prostitution, as provided in Section 30-6A-4 NMSA 1978;

24 (4) criminal sexual contact in the fourth
25 degree, as provided in Section 30-9-12 NMSA 1978;

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1 (5) criminal sexual contact of a minor, as
2 provided in Section 30-9-13 NMSA 1978;

3 (6) incest, as provided in Section 30-10-3
4 NMSA 1978;

5 (7) aggravated indecent exposure, as provided
6 in Section 30-9-14.3 NMSA 1978;

7 (8) an attempt to commit any of the offenses
8 set forth in Paragraphs (1) through (7) of this subsection, as
9 provided in Section 30-28-1 NMSA 1978;

10 (9) any conviction for a felony offense in
11 effect at any time prior to the effective date of the Sexual
12 Predator Civil Commitment Act that is comparable to an offense
13 described in Paragraphs (1) through (7) of this subsection or
14 any federal or other state conviction for a felony offense
15 that, if committed in this state, would be a sexually violent
16 offense pursuant to Paragraphs (1) through (7) of this
17 subsection; or

18 (10) any crime, except those described in
19 Paragraphs (1) through (9) of this subsection, that either at
20 the time of sentencing for the offense or subsequently during
21 civil commitment proceedings pursuant to the Sexual Predator
22 Civil Commitment Act, has been determined beyond a reasonable
23 doubt to have been sexually motivated;

24 J. "sexually violent predator" means a person who
25 has been convicted of or charged with a sexually violent

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1 offense and who suffers from a mental abnormality or
2 personality disorder that makes the person likely to engage in
3 repeat acts of sexual violence and who has serious difficulty
4 in controlling his behavior;

5 K. "transitional release" means any halfway house,
6 work release or other placement designed to assist the person's
7 adjustment and reintegration into the community once released
8 from commitment; and

9 L. "treatment staff" means the persons, agencies or
10 firms employed by or contracted with the secretary to provide
11 treatment, supervision or other services for committed persons.

12 Section 4. NOTICE OF RELEASE OF POTENTIAL PREDATOR--
13 EVALUATION BY MULTIDISCIPLINARY TEAM AND ATTORNEY GENERAL. --

14 A. When it appears to an agency with jurisdiction
15 that a person may be a sexually violent predator, the agency
16 shall give written notice to the attorney general and the
17 multidisciplinary team established in Subsection C of this
18 section. The notice shall be given no less than ninety days
19 prior to:

20 (1) the anticipated release from total
21 confinement of a person who has been convicted of a sexually
22 violent offense, except that in the case of a person who is
23 returned to confinement for no more than ninety days as a
24 result of revocation of parole or other post-release
25 supervision, written notice shall be given as soon as

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1 practicable following the person's readmission to confinement;

2 (2) the release of a person who has been
3 charged with a sexually violent offense and who has been
4 determined to be incompetent to stand trial; or

5 (3) the release of a person who has been found
6 not guilty by reason of insanity of a sexually violent offense.

7 B. The agency with jurisdiction shall inform the
8 attorney general and the multidisciplinary team of the
9 following:

10 (1) the potential predator's name, identifying
11 factors, anticipated future residence and offense history; and

12 (2) documentation of institutional adjustment
13 and any treatment received.

14 C. The secretary of corrections shall establish a
15 multidisciplinary team, which may include individuals from
16 other state agencies, to review available records of each
17 person referred to the team pursuant to Subsection A of this
18 section. The team, within thirty days of receiving notice,
19 shall assess whether the potential predator is a sexually
20 violent predator. The team shall notify the attorney general
21 of its assessment.

22 D. The attorney general shall appoint a
23 prosecutor's review committee to review the records of each
24 person referred to the attorney general pursuant to Subsection
25 A of this section. The prosecutor's review committee shall

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1 assist the attorney general in the determination of whether the
2 person is a sexually violent predator. The assessment of the
3 multidisciplinary team shall be made available to the attorney
4 general and the prosecutor's review committee.

5 E. The agency with jurisdiction and its employees
6 and officials, members of the multidisciplinary team, members
7 of the prosecutor's review committee and individuals
8 contracting, appointed or volunteering to perform services
9 pursuant to this section shall be immune from liability for any
10 good-faith conduct under this section.

11 F. The provisions of this section are not
12 jurisdictional, and failure to comply with its provisions does
13 not prevent the attorney general from proceeding against a
14 person otherwise subject to commitment pursuant to the Sexual
15 Predator Civil Commitment Act.

16 Section 5. PETITION FOR COMMITMENT. --

17 A. Upon a determination by the attorney general and
18 the prosecutor's review committee pursuant to Section 4 of the
19 Sexual Predator Civil Commitment Act that a potential predator
20 is a sexually violent predator, the attorney general may file a
21 petition with the district court, within seventy-five days of
22 the date the attorney general received the written notice by
23 the agency of jurisdiction as provided in Subsection A of
24 Section 4 of the Sexual Predator Civil Commitment Act, alleging
25 that the person is a sexually violent predator and stating

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1 sufficient facts to support the allegation.

2 B. The provisions of this section are not
3 jurisdictional, and failure to comply with its provisions in no
4 way prevents the attorney general from proceeding against a
5 person otherwise subject to the provisions of the Sexual
6 Predator Civil Commitment Act.

7 Section 6. DETERMINATION OF PROBABLE CAUSE. --

8 A. Upon filing of a petition pursuant to Section 5
9 of the Sexual Predator Civil Commitment Act, the district court
10 shall determine whether probable cause exists to believe that
11 the potential predator is a sexually violent predator. If the
12 court determines that probable cause exists, the court shall
13 direct that the potential predator be taken into custody.

14 B. Within seventy-two hours after a potential
15 predator is taken into custody pursuant to Subsection A of this
16 section, the potential predator shall be provided with notice
17 of, and an opportunity to appear in person at, a hearing to
18 contest probable cause as to whether the potential predator is
19 a sexually violent predator. At the hearing, the court shall:

20 (1) verify the potential predator's identity;

21 and

22 (2) determine whether probable cause exists to
23 believe that the potential predator is a sexually violent
24 predator. The state may rely upon the petition or supplement
25 the petition with additional documentary evidence or live

1 testimony.

2 C. At the probable cause hearing, the potential
3 predator has, in addition to the rights previously specified,
4 the right to:

5 (1) be represented by counsel;

6 (2) present evidence on the potential
7 predator's behalf;

8 (3) cross-examine witnesses who testify
9 against the potential predator; and

10 (4) view and copy all petitions and reports in
11 the court file.

12 D. If the court determines that there is probable
13 cause that the potential predator is a sexually violent
14 predator, the court shall direct that the potential predator be
15 transferred to a county jail or other appropriate secure
16 facility for an evaluation as to whether the potential predator
17 is a sexually violent predator. The evaluation shall be
18 conducted by a person, appointed by the court, deemed to be
19 professionally qualified to conduct the examination.

20 Section 7. TRIAL--PROCEDURE. --

21 A. Within sixty days after the completion of a
22 hearing held pursuant to Section 6 of the Sexual Predator Civil
23 Commitment Act, the court shall conduct a trial to determine
24 whether the person is a sexually violent predator. The trial
25 may be continued upon the request of either party upon a

1 showing of good cause, or by the court on its own motion in the
2 due administration of justice, so long as the potential
3 predator will not be substantially prejudiced.

4 B. At all stages of the proceedings under the
5 Sexual Predator Civil Commitment Act, a person subject to that
6 act shall be entitled to the assistance of counsel, and if the
7 person is indigent, the court shall appoint counsel to assist
8 the person.

9 C. When a person is subjected to an examination
10 pursuant to the Sexual Predator Civil Commitment Act, the
11 person may retain experts or professional persons to perform an
12 examination on the person's behalf. When the person wishes to
13 be examined by a qualified expert or professional person of the
14 person's own choice, the examiner may have reasonable access to
15 the person for the purpose of the examination, as well as to
16 all relevant medical and psychological records and reports.

17 D. In the case of a potential predator who is
18 indigent, the court, upon the potential predator's request,
19 shall determine whether the services are necessary and if
20 compensation for the services is reasonable. If the court
21 determines that the services are necessary and the expert or
22 professional person's requested compensation for the services
23 is reasonable, the court shall assist the potential predator in
24 obtaining an expert or professional person to perform an
25 examination or participate in the trial on the potential

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1 predator's behalf. The court shall approve payment for the
2 services upon the filing of a certified claim for compensation
3 supported by a written statement specifying the time expended,
4 services rendered, expenses incurred on behalf of the potential
5 predator and compensation received in the same case or for the
6 same services from any other source.

7 E. The potential predator, the attorney general or
8 the court may demand that the trial be before a jury. A demand
9 for a jury trial shall be filed, in writing, at least four days
10 prior to trial. A jury shall consist of twelve jurors unless
11 the parties agree in writing, with the approval of the court,
12 that the jury shall consist of any number of jurors less than
13 twelve. If no demand is made, the trial shall be before the
14 court without a jury.

15 Section 8. TRIAL--DETERMINATION--COMMITMENT PROCEDURE.--

16 A. In a trial conducted pursuant to Section 7 of
17 the Sexual Predator Civil Commitment Act, the court or jury
18 shall determine whether, beyond a reasonable doubt, the
19 potential predator is a sexually violent predator. If the
20 determination is made by a jury, the determination shall be by
21 unanimous verdict. If the court or jury determines that a
22 person is a sexually violent predator, the person shall be
23 committed to the custody of the secretary for care, treatment
24 and control until such time as the committed person's mental
25 abnormality or personality disorder has changed so that the

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1 person is safe to be at large. The care, treatment and control
2 shall be provided at a facility operated by the department. At
3 all times, a committed person provided with care, treatment and
4 control by the department shall be kept in a secure facility
5 and shall be segregated at all times from other patients under
6 the supervision of the secretary. The department may enter
7 into an agreement with the corrections department for the
8 confinement of sexually violent predators. Sexually violent
9 predators committed to the jurisdiction of the corrections
10 department shall be housed and managed separately from other
11 offenders in the custody of the corrections department, and
12 except for occasional instances of supervised incidental
13 contact, shall be segregated from other offenders.

14 B. If a committed person, while committed to the
15 custody of the secretary, is taken into custody by a law
16 enforcement officer for a parole revocation proceeding, an
17 arrest or a conviction for a criminal offense of any nature,
18 upon release from the custody of the law enforcement officer,
19 the person shall be returned to the custody of the secretary
20 for further treatment. During any period of time a committed
21 person is not in the actual custody or supervision of the
22 secretary, the secretary shall be excused from the provisions
23 of Section 9 of the Sexual Predator Civil Commitment Act. The
24 secretary shall give notice to the court as soon as reasonably
25 possible after the taking of the committed person into custody

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1 that the committed person is no longer in treatment pursuant to
2 the Sexual Predator Civil Commitment Act and shall give notice
3 to the court when the committed person is returned to the
4 custody of the secretary for further treatment.

5 C. If the court or jury is not satisfied beyond a
6 reasonable doubt that the person is a sexually violent
7 predator, the court shall direct the person's release.

8 D. Upon a mistrial, the court shall direct that the
9 person be held at a county jail or other appropriate secure
10 facility until another trial is conducted. A subsequent trial
11 following a mistrial shall be held within ninety days of the
12 previous trial, unless the subsequent trial is continued as
13 provided in Section 7 of the Sexual Predator Civil Commitment
14 Act.

15 E. If a potential predator charged with a sexually
16 violent offense is found to be incompetent to stand trial, and
17 the potential predator's commitment is sought pursuant to this
18 section, the judge or jury shall first hear evidence and
19 determine whether the person did commit the acts charged. The
20 hearing on this issue shall comply with all the procedures
21 specified in Section 7 of the Sexual Predator Civil Commitment
22 Act and this section. In addition, the rules of evidence
23 applicable in criminal cases shall apply, and all
24 constitutional rights available to defendants at criminal
25 trials, other than the right not to be tried while incompetent,

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1 shall apply. After hearing evidence on the issue, the judge or
2 jury shall make specific findings on whether the potential
3 predator did commit the acts charged, the extent to which the
4 person's incompetence or developmental disability affected the
5 outcome of the hearing, including its effect on the person's
6 ability to consult with and assist counsel and to testify on
7 the person's own behalf, the extent to which the evidence could
8 be reconstructed without the assistance of the person and the
9 strength of the prosecution's case. If after the conclusion of
10 the hearing on this issue, the judge or jury finds, beyond a
11 reasonable doubt, that the person did commit the acts charged,
12 the court shall enter a final order, appealable by the person
13 on that issue, and may proceed to consider whether the person
14 should be committed.

15 F. A determination that a person is a sexually
16 violent predator pursuant to this section may be appealed;
17 provided that the potential predator shall not be entitled to
18 release pending the appeal.

19 Section 9. ANNUAL EXAMINATION AND REVIEW. --

20 A. A person committed pursuant to the Sexual
21 Predator Civil Commitment Act shall have an examination of that
22 person's mental condition once every year. The committed
23 person may retain, or, if the person is indigent and so
24 requests, the court may appoint a qualified professional to
25 examine the person. The professional shall have access to all

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1 records concerning that person. An annual report shall be
2 provided by the secretary to the court that committed the
3 person, and the court shall conduct an annual review of the
4 status of the committed person. Nothing contained in the
5 Sexual Predator Civil Commitment Act prohibits a committed
6 person from otherwise petitioning the court for discharge at
7 the annual review. The secretary shall provide a committed
8 person with an annual written notice of the committed person's
9 right to petition the court for release over the secretary's
10 objection. The notice shall contain a waiver of rights. The
11 secretary shall forward the notice and waiver form to the court
12 with the annual report. A committed person shall have the
13 right to representation by an attorney for the review, but the
14 committed person is not entitled to be present at the review.

15 B. If a committed person has petitioned the court
16 for release and if, after reviewing the annual report and the
17 information contained in the petition, the court at the review
18 determines that probable cause exists to believe that the
19 person's mental abnormality or personality disorder has changed
20 so that the person is safe to be placed in transitional
21 release, the court shall set a hearing on the issue. At the
22 hearing for transitional release, a committed person shall be
23 entitled to be present and entitled to the benefit of all
24 constitutional protections that were afforded the committed
25 person at the initial commitment trial. The attorney general

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1 shall represent the state and may have the committed person
2 evaluated by professionals chosen by the state. A committed
3 person may also request an expert evaluation on the committed
4 person's behalf, and the court shall appoint an expert if the
5 committed person is indigent and requests an appointment.
6 Either party may demand a jury trial. The burden of proof at
7 the hearing shall be upon the state to prove beyond a
8 reasonable doubt that a committed person's mental abnormality
9 or personality disorder remains such that the committed person
10 is not safe to be placed in transitional release and if placed
11 in transitional release is likely to engage in acts of sexual
12 violence.

13 C. If, after the hearing, the court or jury is
14 convinced beyond a reasonable doubt that a committed person is
15 not appropriate for transitional release, the court shall order
16 that the committed person remain in secure commitment.
17 Otherwise, the court shall order that the committed person be
18 placed in transitional release and the secretary shall transfer
19 the person to the transitional release program.

20 Section 10. PETITION FOR TRANSITIONAL RELEASE--
21 PROCEDURE.--

22 A. If the secretary determines that a committed
23 person's mental abnormality or personality disorder has changed
24 so that the person is not likely to commit predatory acts of
25 sexual violence if placed in transitional release, the

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1 secretary shall authorize the committed person to petition the
2 court for transitional release. The petition shall be served
3 upon the court and the attorney general. The court, upon
4 receipt of the petition for transitional release, shall order a
5 hearing within thirty days. The attorney general shall
6 represent the state and may have the committed person examined
7 by a professional of the attorney general's choice. The
8 hearing shall be before a jury if demanded by either the
9 committed person or the attorney general. The burden of proof
10 shall be upon the attorney general to show beyond a reasonable
11 doubt that the committed person's mental abnormality or
12 personality disorder remains such that the committed person is
13 not safe to be at large and that if placed in transitional
14 release is likely to commit a sexually violent offense.

15 B. If, after the hearing, the court is convinced
16 beyond a reasonable doubt that the committed person is not
17 appropriate for transitional release, the court shall order
18 that the person remain in secure commitment. Otherwise, the
19 court shall order that the person be placed in transitional
20 release and the secretary shall transfer the person to the
21 transitional release program.

22 Section 11. TRANSITIONAL RELEASE. --

23 A. The secretary may contract for services to be
24 provided in the transitional release program. During the
25 period when a committed person is in transitional release, the

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1 person shall comply with rules the secretary may establish for
2 the program and shall comply with every directive of the
3 treatment staff of the transitional release program.

4 B. When a committed person is in a transitional
5 release program and the treatment staff determines that the
6 committed person has violated a rule or directive associated
7 with the transitional release program, the treatment staff may
8 remove the person from the transitional release program and
9 return the person to the secure commitment facility, or may
10 request the district court to issue an emergency ex parte order
11 directing a law enforcement officer to take the person into
12 custody and return the person to a secure commitment facility.
13 The request may be made verbally or by telephone, but shall be
14 followed in written or facsimile form delivered to the court by
15 not later than 5:00 p.m. of the first day the district court is
16 open for the transaction of business after the verbal or
17 telephonic request was made.

18 C. When a committed person is returned to a secure
19 commitment facility from a transitional release program, notice
20 thereof shall be given by the secretary to the court. The
21 court shall set the matter for a hearing within two working
22 days of receipt of notice of the committed person's having been
23 returned to the secure commitment facility and cause notice
24 thereof to be given to the attorney general, the committed
25 person and the secretary. The attorney general shall have the

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1 burden of proof to show probable cause that the committed
2 person violated conditions of transitional release. The
3 hearing shall be heard by the court, without a jury. At the
4 conclusion of the hearing, the court shall issue an order
5 returning the committed person to the secure commitment
6 facility or to the transitional release program and may order
7 further conditions with which the person must comply if the
8 person is returned to the transitional release program.

9 Section 12. CONDITIONAL RELEASE. --

10 A. During the period when a committed person is in
11 transitional release, the person at least annually, and at any
12 other time deemed appropriate by the treatment staff, shall be
13 examined by the treatment staff to determine if the person's
14 mental abnormality or personality disorder has changed so as to
15 warrant the person being considered for conditional release.
16 The treatment staff shall forward a report of its examination
17 to the court. After reviewing the report, if the court
18 determines that probable cause exists to believe that the
19 committed person's mental abnormality or personality disorder
20 has changed so that the person is safe to be placed in
21 conditional release, the court shall then set a hearing on the
22 issue. The attorney general shall have the burden of proof to
23 show beyond a reasonable doubt that the committed person's
24 mental abnormality or personality disorder remains such that
25 the person is not safe to be at large and that if placed on

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1 conditional release is likely to engage in acts of sexual
2 violence. The committed person shall have the same rights as
3 enumerated in Section 7 of the Sexual Predator Civil Commitment
4 Act. Subsequent to either a court review or a hearing, the
5 court shall issue an appropriate order with findings of fact.
6 The order of the court shall be provided to the attorney
7 general, the committed person and the secretary.

8 B. If, after the hearing, the court is convinced
9 beyond a reasonable doubt that the committed person is not
10 appropriate for conditional release, the court shall order that
11 the person remain either in secure commitment or in
12 transitional release. Otherwise, the court shall order that
13 the committed person be placed on conditional release.

14 Section 13. CONDITIONAL RELEASE--PLAN OF TREATMENT--
15 HEARING FOR FINAL RELEASE.--

16 A. If, after a hearing conducted pursuant to
17 Section 12 of the Sexual Predator Civil Commitment Act, the
18 court determines that a committed person should be placed on
19 conditional release, the court, based upon the recommendation
20 of the treatment staff, shall establish a plan of treatment
21 that the person shall be ordered to follow. The plan of
22 treatment may include:

23 (1) provisions as to where the committed
24 person shall reside and with whom; and

25 (2) requirements for taking prescribed

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1 medications, attending individual and group counseling,
2 maintaining employment, having no contact with children, not
3 frequenting facilities, locations, events or otherwise in which
4 children are likely to be present and not engaging in
5 activities in which contact with children is likely.

6 B. Upon a showing by a committed person that the
7 person accepts the plan of treatment and is prepared to follow
8 it, the court shall release the person from the transitional
9 release program.

10 C. When a minimum of five years has passed and a
11 committed person has been free of violations of conditions of
12 the person's treatment plan, the treatment staff or other
13 professionals directed by the court may examine the person to
14 determine if the person's mental abnormality or personality
15 disorder has changed so as to warrant being considered for
16 final discharge. A report shall be forwarded to the court.
17 After reviewing the report, if the court determines that
18 probable cause exists to believe that the committed person's
19 mental abnormality or personality disorder has changed so that
20 the person is safe to be considered for final discharge, the
21 court shall set a formal hearing on the issue. The attorney
22 general shall have the burden of proof to show beyond a
23 reasonable doubt that the person's mental abnormality or
24 personality disorder remains such that the person is not
25 appropriate for final discharge. The person shall have the

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1 same rights as enumerated in Section 7 of the Sexual Predator
2 Civil Commitment Act. Subsequent to either a court review or a
3 hearing, the court shall issue an appropriate order with
4 findings of fact. The order of the court shall be provided to
5 the attorney general, the committed person and the secretary.

6 D. If, after a hearing, the court is convinced
7 beyond a reasonable doubt that the committed person is not
8 appropriate for final discharge, the court shall continue
9 custody of the person with the secretary for placement in a
10 secure commitment facility, transitional release program or
11 conditional release program. Otherwise, the court shall order
12 the person finally discharged. In the event the court does not
13 order final discharge of the person, the committed person still
14 retains the right to annual reviews.

15 E. At any time during which a committed person is
16 on conditional release and the professional designated by the
17 court in the treatment plan to monitor the person's compliance
18 with the plan determines that the person has violated a
19 material condition of that plan, the professional may request
20 the district court to issue an emergency ex parte order
21 directing a law enforcement officer to take the committed
22 person into custody and return the person to a secure
23 commitment facility. The request may be made verbally or by
24 telephone, but shall be followed in written or facsimile form
25 delivered to the court not later than 5:00 p.m. of the first

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1 day the district court is open for the transaction of business
2 after the verbal or telephonic request was made.

3 F. When a committed person is returned to a secure
4 commitment facility from conditional release, notice thereof
5 shall be given by the secretary to the court. The court shall
6 set the matter for a hearing within two working days of receipt
7 of notice of the committed person's having been returned to the
8 secure commitment facility and cause notice thereof to be given
9 to the attorney general, the committed person and the
10 secretary. The attorney general shall have the burden of proof
11 to show probable cause that the committed person violated
12 conditions of conditional release. The court shall conduct the
13 hearing without a jury. At the conclusion of the hearing, the
14 court shall issue an order returning the committed person to
15 the secure commitment facility, to the transitional release
16 program or to conditional release, and may order further
17 conditions with which the committed person must comply if the
18 person is returned to either the transitional release program
19 or to conditional release.

20 G. A final discharge shall not prevent a person
21 from being prosecuted for any criminal acts that the person is
22 alleged to have committed or from being subject in the future
23 to a subsequent commitment pursuant to the Sexual Predator
24 Civil Commitment Act.

25 Section 14. NOTICE TO VICTIMS OF THE RELEASE OF A

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1 COMMITTED PERSON. --

2 A. In addition to any other information required to
3 be released pursuant to the Sexual Predator Civil Commitment
4 Act, prior to the release of a person committed pursuant to
5 that act, the secretary shall give written notice of the
6 person's placement or release to any victim of the person's
7 activities or crime whose address is known to the secretary;
8 provided that failure to notify shall not be a reason for
9 postponement of release.

10 B. A failure to notify pursuant to this section
11 shall not create a cause of action against the state or an
12 employee of the state who acts within the scope of his
13 employment.

14 Section 15. RIGHT OF COMMITTED PERSON TO PETITION. --
15 Nothing in the Sexual Predator Civil Commitment Act shall
16 prohibit a committed person from filing a petition for
17 transitional release, conditional release or final discharge
18 pursuant to the provisions of that act; provided that, if a
19 person has previously filed a petition for transitional
20 release, conditional release or final discharge without the
21 secretary's approval and the court determined either, upon
22 review of the petition or following a hearing, that the
23 petition was frivolous or that the committed person's condition
24 had not so changed that the person was safe to be at large, the
25 court shall deny the subsequent petition unless it contains

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1 facts upon which a court could find the condition of the
2 committed person had changed so that a hearing was warranted.
3 Upon receipt of a first or subsequent petition from a committed
4 person without the secretary's approval, the court shall
5 endeavor whenever possible to review the petition and determine
6 if the petition is based upon frivolous grounds and, if so,
7 shall deny the petition without a hearing.

8 Section 16. CONSTITUTIONAL PROTECTIONS. --The involuntary
9 detention or commitment of persons pursuant to the Sexual
10 Predator Civil Commitment Act shall conform to all
11 constitutional requirements for care and treatment.

12 Section 17. SPECIAL ALLEGATION OF SEXUAL MOTIVATION--
13 PROCEDURE. --

14 A. In any criminal case other than those offenses
15 described in Paragraphs (1) through (9) of Subsection I of
16 Section 3 of the Sexual Predator Civil Commitment Act, the
17 district attorney shall file a special allegation of sexual
18 motivation within ten days after arraignment when sufficient
19 admissible evidence exists that, when considered with the most
20 plausible, reasonably foreseeable defense that could be raised
21 under the evidence, would justify a finding of sexual
22 motivation by a reasonable and objective fact finder.

23 B. In a criminal case in which there has been a
24 special allegation of sexual motivation, the state shall prove
25 beyond a reasonable doubt that the accused committed the crime

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1 with a sexual motivation. The court or jury, if it finds the
2 defendant guilty, shall also find a special verdict as to
3 whether the defendant committed the crime with a sexual
4 motivation.

5 C. The district attorney shall not withdraw the
6 special allegation of sexual motivation without approval of the
7 court, through an order of dismissal of the special allegation.
8 The court shall not dismiss the special allegation unless it
9 finds that the order is necessary to correct an error in the
10 initial charging decision or unless there are evidentiary
11 problems that make proving the special allegation doubtful.

12 Section 18. CONFIDENTIAL INFORMATION OR RECORDS. -- In
13 order to protect the public, relevant information and records
14 that are otherwise confidential or privileged shall be released
15 to the agency with jurisdiction or the attorney general for the
16 purpose of meeting the notice requirement provided in Section 4
17 of the Sexual Predator Civil Commitment Act and for determining
18 whether a person is or continues to be a sexually violent
19 predator.

20 Section 19. COURT RECORDS. -- Any psychological reports,
21 drug and alcohol reports, treatment records, reports of the
22 diagnostic center or medical records that have been submitted
23 to the court or admitted into evidence pursuant to the
24 provisions of the Sexual Predator Civil Commitment Act shall be
25 part of the record, but shall be sealed and opened only on

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1 order of the court.

2 Section 20. INELIGIBILITY FOR BAIL, BOND, HOUSE ARREST OR
3 OTHER RELEASE. --A person for whom a petition pursuant to
4 Section 5 of the Sexual Predator Civil Commitment Act has been
5 filed and who is in the secure confinement of the state shall
6 not be eligible for bail, bond, house arrest or any other
7 measures for releasing the person from the physical, protective
8 custody of the state.

9 Section 21. COSTS--RESPONSIBILITY OF SECRETARY. --The
10 secretary is responsible for all costs relating to the
11 evaluation and treatment of committed persons pursuant to any
12 provision of the Sexual Predator Civil Commitment Act.
13 Reimbursement may be obtained by the secretary for the cost of
14 care and treatment, including placement in transitional
15 release, of committed persons who are not indigent by assessing
16 a fee pursuant to Section 43-1-25 NMSA 1978.

17 Section 22. SEVERABILITY. --If any part or application of
18 the Sexual Predator Civil Commitment Act is held invalid, the
19 remainder or its application to other situations or persons
20 shall not be affected.

21 Section 23. EMERGENCY. --It is necessary for the public
22 peace, health and safety that this act take effect immediately.